Enclosure

CLEAN AIR ACT MOBILE SOURCE EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO. CAA-17-8355 Respondent: Trick Trucks Seven, Inc.
211-1 Sulky Dr.
Winchester, VA 22602

1. The parties enter into this Clean Air Act Mobile Source Expedited Settlement Agreement (Agreement) in order to settle the civil violations discovered as a result of the inspection specified in Table 1, attached, incorporated into this Agreement by reference. The civil violations that are the subject of this Agreement are described in Table 2, attached, incorporated into the Agreement by reference, regarding the vehicles/engines specified therein.

2. Respondent admits to being subject to the Clean Air Act (CAA) and its associated regulations, and that the United States Environmental Protection Agency (EPA) has jurisdiction over the Respondent and the Respondent's conduct described in Table 2. Respondent ~~does not contest the~~ findings detailed therein, and waives any objections Respondent may have to the EPA's jurisdiction. neither admits nor denies the factual initials

3. Respondent consents to the payment of a penalty in the amount of $30,295, further described in Table 3, attached, incorporated into this Agreement by reference. Respondent agrees to follow the instructions in "CAA Mobile Source Expedited Settlement Agreement Instructions," attached, incorporated into this Agreement by reference. Respondent certifies that the required remediation, detailed in Table 3, has been carried out.

4. By its first signature below, the EPA approves the findings resulting from the inspection and the alleged violations set forth in Tables 1 and 2. Upon signing and returning this Agreement to the EPA, Respondent consents to the terms of this Agreement without further notice. Respondent acknowledges this Agreement is binding on the parties signing below, and becomes effective on the date of the EPA Air Enforcement Division Director's ratifying signature.

APPROVED BY EPA:

Evan Belser Date: Aug. 8, 2017

for Phillip A. Brooks, Director, Air Enforcement Division

APPROVED BY RESPONDENT:

Name (print): Mrs. Jami Clark

Title (print): Corp Secretary

Signature: Date: Aug. 28, 2017

RATIFIED BY EPA:

Evan Belser Date: Sept 21, 2017

for Phillip A. Brooks, Director, Air Enforcement Division

Table 1 - Inspection Information	
Entry/Inspection/Letter Date(s):	**Docket Number:**
September 16, 2016	CAA-17-8355
Respondent Location:	**Entry/Inspection Number(s)**
211-1 Sulky Dr.	
City:	**Inspector(s) Name(s):**
Winchester	James Adamiec
State: VA **Zip Code:** 22602	**EPA Approving Official:** Phillip A. Brooks
Respondent:	**EPA Enforcement Contact(s):**
Trick Trucks Seven, Inc.	Mark Palermo, Attorney-Advisor, (202) 564-8894

Table 2 - Description of Violations and Vehicles/Engines

On June 29 and November 23, 2016, authorized inspectors obtained evidence that Trick Trucks Seven, Inc. (Respondent) sold products which render inoperative emission control systems on EPA-certified motor vehicles and motor vehicle engines (defeat devices). From January 31, 2015, until September 28, 2016, the EPA has determined that Respondent sold 32 defeat devices in violation of Title II of the Clean Air Act (CAA) § 203(a)(3), 42 U.S.C. § 7522(a)(3). These violations include the sale of (1) engine control module reprogrammers (also known as "tuners") that disable emission control systems on EPA-certified motor vehicles, such as Exhaust Gas Recirculation (EGR) systems, vehicle engine active fuel management, on-board diagnostic systems, and rear oxygen sensors; and (2) exhaust pipe replacement components that delete or bypass aftertreatment emission control devices such as Diesel Oxidation Catalysts (DOC) and Diesel Particulate Filter (DPF) systems.

Defeat Device Description	Part Number	Invoice No.	Date	Quantity Sold
MBRP 4" PLM Series Turbo-Back Exhaust System for 2003 – 2007 Ford 6.0L Powerstroke	S6212PLM	9157	1/31/2015	1
MBRP 4" SLM Series Turbo-Back Exhaust System for 2004.5 – 2007 Dodge 5.9L Cummins	S6126SLM	9489	3/6/2015	1
MBRP 5" PLM Series Downpipe-Back Exhaust System for 2001 – 2007 GM 6.6L Duramax	S6020PLM; GM8424	10171	4/30/2015	1
MBRP 5" SLM Series Downpipe Back Exhaust System for 2001 – 2007 GM 6.6L Duramax 2500/3500 EC/CC	S6020SLM	10342	5/14/2015	1
Sinister EGR Delete Kit	SPECIALITEM	10376	5/18/2015	1
MBRP 5" Installer Series Turbo-back Exhaust System for 2004.5 – 2007 Dodge 5.9L Cummins	S6116AL	10837	6/19/2015	1
MBRP 5" PLM Series Downpipe-Back Exhaust System fo00r 2001 – 2007 GM 6.6L Duramax	S6020PLM	10951	6/29/2015	1

SCT FLASH x4 Tuner	7015	11430	8/7/2015	1
SCT FLASH x4 Tuner	7015	11670	8/27/2015	1
SCT FLASH x4 Tuner	7015	11732	9/2/2015	1
Magnaflow 4" Turbo-Back Aluminized Pro Series Exhaust System for 2004.5 – 2007	18998	12787	12/1/2015	1
EGR Cooler Delete Kit	1091011	12787	12/1/2015	1
MBRP 4" PLM Series Turbo-Back Exhaust System for 2003 – 2007 Ford 6.0L Powerstroke	S6212PLM	13370	1/14/2016	1
MBRP 4" PLM Series Turbo-Back Exhaust System for 2003 – 2007 Ford 6.0L Powerstroke	S6212PLM	13886	3/2/2016	1
MBRP 4" PLM Series Downpipe Back Exhaust System for 2001 – 2007 GM 6.6L Duramax	S6004PLM	13903	3/2/2016	1
MBRP 4" SLM Series Turbo-Back Exhaust System for 2004.5 – 2007 Dodge 5.9L Cummins	S6126PLM	14241	3/26/2016	1
MBRP 5" PLM Series Turbo-Back Exhaust System for 2004.5 – 2007 Dodge 5.9L Cummins	S6116PLM	14257	3/28/2016	1
SCT FLASH x4 Tuner	7015	14272	3/30/2016	1
SCT FLASH x4 Tuner	7015	14602	7/11/2016	1
MBRP 4" Performance Series Turbo-Back Exhaust System for 2003-2004 Dodge 5.9L Cummins	S6104P	14995	5/31/2016	1
Flo-Pro SS664 for 2011 GM Duramax 6.6L 5" Single System[1]			6/29/2016	1
SCT FLASH x4 Tuner	7015	15496	7/1/2016	1
Sinister Diesel EGR Delete Kit (off-road)	SPECIALITEM	15515	7/5/2016	1
Moto Ops Exhaust Kit 5" (off-road)	SPECIALITEM	15515	7/5/2016	1
Moto Ops Programmer (invoice states "customer supplied" yet there was a charge for this transaction)	SPECIALITEM	15515	7/5/2016	1
Flo-Pro Downpipe (off-road)	SPECIALITEM	15515	7/5/2016	1
SCT FLASH x4 Tuner	7015	15602	7/11/2016	1

[1] EPA discovered Respondent was in the process of installing this defeat device in a GM pickup truck during EPA's June 29, 2016 inspection of Respondent's facility. The open packaging for the defeat device had a shipping address of Respondent's facility. In addition, EPA inspectors observed a removed DPF in the bed of the pickup truck, and instructions for installation of the defeat device found near the truck discussed removal of the DPF and replacement of the DPF with the defeat device.

SCT FLASH x4 Tuner	7015	15607	7/11/2016	1
MBRP 4" Performance Series Turbo-Back Exhaust System for 2003-2004 Dodge 5.9L Cummins	S6104P	16272	8/25/2016	1
MBRP 5" SLM Series Downpipe-Back Exhaust System for 2001-2007 GM 6.6L Duramax	S60200SLM	16277	8/25/2016	1
SCT FLASH x4 Tuner	7015	16651	9/22/2016	1
MBRP 4" Installer Series Turbo-Back Exhaust System for 2003-2004 Dodge 5.9L Cummins	S6104AL	16726	9/28/2016	1

Table 3 - Penalty and Required Remediation	
Penalty	$30,295
Required Remediation	In addition to paying the monetary penalty, Respondent must cease and refrain from purchasing, selling, or installing any device that defeats, bypasses, or otherwise renders inoperative an emission component of any motor vehicle engine regulated by the EPA. Also, Respondent must cease and refrain from tampering with emission control systems on EPA-certified motor vehicles and motor vehicle engines. Toward that end, Respondent agrees to comply with the Compliance Plan attached as Appendix A. Respondent shall also ensure that all staff receive a copy of the attached Compliance Plan on an annual basis.

Appendix A:

Compliance Plan to Avoid Illegal Tampering and Aftermarket Defeat Devices

This document explains how to help ensure compliance with the Clean Air Act's prohibitions on tampering and aftermarket defeat devices. The document specifies what the law prohibits, and sets forth two principles to follow in order to prevent violations.

The Clean Air Act Prohibitions on Tampering and Aftermarket Defeat Devices

The Act's prohibitions against tampering and aftermarket defeat devices are set forth in section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3), (hereafter "§ 203(a)(3)"). The prohibitions apply to all vehicles, engines, and equipment subject to the certification requirements under sections 206 and 213 of the Act. This includes all motor vehicles (e.g., light-duty vehicles, highway motorcycles, heavy-duty trucks), motor vehicle engines (e.g., heavy-duty truck engines), nonroad vehicles (e.g., all-terrain vehicles, off road motorcycles), and nonroad engines (e.g., marine engines, engines used in generators, lawn and garden equipment, agricultural equipment, construction equipment). Certification requirements include those for exhaust or "tailpipe" emissions (e.g., oxides of nitrogen, carbon monoxide, hydrocarbons, particulate matter, greenhouse gases), evaporative emissions (e.g., emissions from the fuel system), and onboard diagnostic systems.

The prohibitions are as follows:

> "The following acts and the causing thereof are prohibited–"
>
> > **Tampering:** CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R. § 1068.101(b)(1): "for any person to remove or render inoperative any device or element of design installed on or in a [vehicle, engine, or piece of equipment] in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser;"
>
> > **Defeat Devices:** CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(2): "for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any [vehicle, engine, or piece of equipment], where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a [vehicle, engine, or piece of equipment] in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use."

Section 203(a)(3)(A) prohibits tampering with emission controls. This includes those controls that are in the engine (e.g., fuel injection, exhaust gas recirculation), and those that are in the exhaust (e.g., filters, catalytic convertors, and oxygen sensors). Section 203(a)(3)(B) prohibits (among other things) aftermarket defeat devices, including hardware (e.g., certain modified exhaust pipes) and software (e.g., certain engine tuners and other software changes).

The EPA's longstanding view is that conduct that may be prohibited by § 203(a)(3) does not warrant enforcement if the person performing that conduct has a documented, reasonable basis for knowing that the conduct does not adversely affect emissions. *See* Mobile Source Enforcement Memorandum 1A (June 25, 1974).

The EPA evaluates each case independently, and the absence of such reasonable basis does not in and of itself constitute a violation. When determining whether tampering occurred, the EPA typically compares the vehicle after the service to the vehicle's original, or "stock" configuration (rather than to the vehicle prior to the service). Where a person is asked to perform service on an element of an emission control system that has already been tampered, the EPA typically does not consider the service to be illegal tampering if the person either declines to perform the service on the tampered system or restores the element to its certified configuration.

Below are two guiding principles to help ensure Respondent commits no violations of the Act's prohibitions on tampering and aftermarket defeat devices.

Principle 1: Respondent Will Not Modify any OBD System

Respondent will neither remove nor render inoperative any element of design of an OBD system.[i] Also, Respondent will not manufacture, sell, offer for sale, or install any part or component that bypasses, defeats, or renders inoperative any element of design of an OBD system.

Principle 2: Respondent Will Ensure There is a *Reasonable Basis* for Conduct Subject to the Prohibitions

For conduct unrelated to OBD systems, Respondent will have a *reasonable basis* demonstrating that its conduct[ii] does not adversely affect emissions. Where the conduct in question is the manufacturing or sale of a part or component, Respondent must have a *reasonable basis* that the installation and use of that part or component does not adversely affect emissions. Respondent will fully document its *reasonable basis*, as specified in the following section, at or before the time the conduct occurs.

Reasonable Bases

This section specifies several ways that Respondent may document that it has a "reasonable basis" as the term is used in the prior section. In any given case, Respondent must consider all the facts including any unique circumstances and ensure that its conduct does not have any adverse effect on emissions.[iii]

A. **Identical to Certified Configuration:** Respondent generally has a reasonable basis if its conduct: is solely for the maintenance, repair, rebuild, or replacement of an emissions-related element of design; and restores that element of design to be identical to the certified configuration (or, if not certified, the original configuration) of the vehicle, engine, or piece of equipment.[iv]

B. **Replacement After-Treatment Systems:** Respondent generally has a reasonable basis if the conduct:

(1) involves a new after-treatment system used to replace the same kind of system on a vehicle, engine or piece of equipment and that system is beyond its emissions warranty; and

(2) the manufacturer of that system represents in writing that it is appropriate to install the system on the specific vehicle, engine or piece of equipment at issue.

C. **Emissions Testing:**[v] Respondent generally has a reasonable basis if the conduct:

(1) alters a vehicle, engine, or piece of equipment;

(2) emissions testing shows that the altered vehicle, engine, or piece of equipment will meet all applicable emissions standards for its full useful life; and

(3) where the conduct includes the manufacture, sale, or offering for sale of a part or component, that part or component is marketed only for those vehicles, engines, or pieces of equipment that are appropriately represented by the emissions testing.

D. **EPA Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the EPA under 40 C.F.R. Part 85 Subpart V (or any other applicable EPA certification program).[vi]

E. **CARB Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the California Air Resources Board ("CARB").[vii]

ENDNOTES

[i] *OBD system* includes any system which monitors emission-related elements of design, or that assists repair technicians in diagnosing and fixing problems with emission-related elements of design. If a problem is detected, an OBD system should record a diagnostic trouble code, illuminate a malfunction indicator light or other warning lamp on the vehicle instrument panel, and provide information to the engine control unit such as information that induces engine derate (as provided by the OEM) due to malfunctioning or missing emission-related systems. Regardless of whether an element of design is commonly considered part of an OBD system, the term "OBD system" as used in this Appendix includes any element of design that monitors, measures, receives, reads, stores, reports, processes or transmits any information about the condition of or the performance of an emission control system or any component thereof.

[ii] Here, the term *conduct* means: all service performed on, and any change whatsoever to, any emissions-related element of design of a vehicle, engine, or piece of equipment within the scope of § 203(a)(3); the manufacturing, sale, offering for sale, and installation of any part or component that may alter in any way an emissions-related element of design of a vehicle, engine, or piece of equipment within the scope of § 203(a)(3), and any other act that may be prohibited by § 203(a)(3).

[iii] General notes concerning the Reasonable Bases: Documentation of the above-described reasonable bases must be provided to EPA upon request, based on the EPA's authority to require information to determine compliance. CAA § 208, 42 U.S.C. § 7542. The EPA issues no case-by-case pre-approvals of reasonable bases, nor exemptions to the Act's prohibitions on tampering and aftermarket defeat devices (except where such an exemption is available by regulation). A reasonable basis consistent with this Appendix does not constitute a certification, accreditation, approval, or any other type of endorsement by EPA (except in cases where an EPA Certification itself constitutes the reasonable basis). No claims of any kind, such as "Approved [or certified] by the Environmental Protection Agency," may be made on the basis of the reasonable bases described in this Policy. This includes written and oral advertisements and other communication. However, if true on the basis of this Appendix, statements such as the following may be made: "Meets the emissions control criteria in the United States Environmental Protection Agency's Tampering Policy in order to avoid liability for violations of the Clean Air Act." There is no reasonable basis where documentation is fraudulent or materially incorrect, or where emissions testing was performed incorrectly.

[iv] Notes on Reasonable Basis A: The conduct should be performed according to instructions from the original manufacturer (OEM) of the vehicle, engine, or equipment. The "certified configuration" of a vehicle, engine, or piece of equipment is the design for which the EPA has issued a certificate of conformity (regardless of whether that design is publicly available). Generally, the OEM submits an application for certification that details the designs of each product it proposes to manufacture prior to production. The EPA then "certifies" each acceptable design for use, in the upcoming model year. The "original configuration" means the design of the emissions-related elements of design to which the OEM manufactured the product. The appropriate source for technical information regarding the certified or original configuration of a product is the product's OEM. In the case of a replacement part, the part manufacturer should represent in writing that the replacement part will perform identically with respect to emissions control as the replaced part, and should be able to support the representation with either: (a) documentation that the replacement part is identical to the replaced part (including engineering drawings or similar showing identical dimensions, materials, and design), or (b) test results from emissions testing of the replacement part. In the case of engine switching, installation of an engine into a different vehicle or piece of equipment by any person would be considered tampering unless the resulting vehicle or piece of equipment is (a) in the same product category (e.g., light-duty vehicle) as the engine originally powered and (b) identical (with regard to all emissions-related elements of design) to a certified configuration of the same or newer model year as the vehicle chassis or equipment. Alternatively, Respondent may show through emissions testing that there is a reasonable basis for an engine switch under Reasonable Basis C. Note that there are some substantial practical limitations to switching engines. Vehicle chassis and engine designs of one vehicle manufacturer are very distinct from those of another, such that it is generally not possible to put an engine into a chassis of a different manufacturer and have it match up to a certified configuration.

[v] Notes on emissions testing: Where the above-described reasonable bases involve emissions testing, unless otherwise noted, that testing must be consistent with the following. The emissions testing may be performed by someone other than the person performing the conduct (such as an aftermarket parts manufacturer), but to be consistent with this Appendix, the person performing the conduct must have all documentation of the reasonable basis at or before the conduct. The emissions testing and documentation required for this reasonable basis is the same as the testing and documentation required by regulation (e.g., 40 C.F.R. Part 1065) for the purposes of original EPA certification of the vehicle, engine, or equipment at issue. Accelerated aging techniques and in-use testing are acceptable only insofar as they are acceptable for purposes of original EPA certification. The applicable emissions standards are either the emissions standards on the Emission Control Information Label on the product (such as any stated family emission limit, or FEL), or if there is no such label, the fleet standards for the product category and model year. To select test vehicles or test engines where EPA regulations do not otherwise prescribe

how to do so for purposes of original EPA certification of the vehicle, engine, or equipment at issue, one must choose the "worst case" product from among all the products for which the part or component is intended. EPA generally considers "worst case" to be that product with the largest engine displacement within the highest test weight class. The vehicle, engine, or equipment, as altered by the conduct, must perform identically both on and off the test(s), and can have no element of design that is not substantially included in the test(s).

[vi] Notes on Reasonable Basis D: This reasonable basis is subject to the same terms and limitations as EPA issues with any such certification. In the case of an aftermarket part or component, there can be a reasonable basis only if: the part or component is manufactured, sold, offered for sale, or installed on the vehicle, engine, or equipment for which it is certified; according to manufacturer instructions; and is not altered or customized, and remains identical to the certified part or component.

[vii] Notes on Reasonable Basis E: This reasonable basis is subject to the same terms and limitations as CARB imposes with any such certification. The conduct must be legal in California under California law. However, in the case of an aftermarket part or component, the EPA will consider certification from CARB to be relevant even where the certification for that part or component is no longer in effect due solely to passage of time.